WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-08-2005

CORAM:

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
and
THE HONOURABLE MR.JUSTICE AR.RAMALINGAM

Contempt Appeal Nos.15 and 16 of 2004

---

Cont.A.No.15 of 2004:

1. M/s. Jamals,
   Rep. by its Managing Partner
   Mr.S.C.M.Jamaldeen
   Mount Chambers,
   No.758, Anna Salai,
   Chennai-600 002.

2. J.C.Shameem Cassim

3. M/s. Jamals,
   A partnership firm,
   Rep. by its Partner
   Mr.M.A.Mohamed Sirajudeen,
   Mount Chambers,
   No.758, Anna Salai,
   Chennai-600 002. .. Appellants

vs.

1. P.Syamala
   Proprietrix,
   Prajwal Associates.

2. P.Bhaskara Reddy

3. R.Gopinathan
4. G.Padmini
5. G.Bhupesh
6. G.Mona

7. M/s.Niruba & Co.,
   Rep. by its Partner R.Gopinathan
   No.46, I Street, Sait Colony,
   Egmore, Chennai-8.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

8. M/s.R.P.G.Builders,
   Rep. by its Partner G.Padmini,
   No.46, I Street, Sait Colony,
   Egmore, Chennai-8.

9. A.Dhanasekaran,
   Sub Registrar.
   O/o. The Sub Registrar
   P.H.Road, Periamet,
   Chennai-3.

10. K.S.Abdur Rawoof
11. V.M.A.Jahanara
    Rep. by her Power Agent
    K.S.Abdul Rawoof.
12. Mohamed Imran Sait
13. Abdul Khader Sulaiman
14. Mohamed Rafiq Moosa
15. C.R.Kaiser
16. Dr.David V.Rajan
17. Mohamed Arshadu Ali
Rep. By his father and Attorney M.E.Mohamad Sheriff
18. S.M.Noordeen
19. S.Mariyam Jamaliya
    Rep. by her Power Agent S.A.Ahmed.
20. Anjum Rahim Khan
21. T.M.Athiya Mariyam
    Rep. by her father & guardian
    T.M.Abdul Shakoor
22. M.M.Fathima Fasmin
    Rep. by her Power of Attorney Agent
    M.A.Mohamed Yousuf
23. K.S.A.Mehrajunesha
    Rep. by her Attorney
    Mohamed Hussain
24. Sherbanu Moosa
(Respondents 3 to 24 given up) .. Respondents

Cont.A.No.16 of 2004:
1. R.Gopinathan
2. G.Padmini
3. G.Bhupesh
4. G.Mona

5. M/s.Niruba & Co.,
   Rep. by its Partner R.Gopinathan
   No.46, I Street, Sait Colony,
   Egmore, Chennai-8.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

6. M/s.R.P.G.Builders,
   Rep. by its Partner G.Padmini,
   No.46, I Street, Sait Colony,
   Egmore, Chennai-8. .. Appellants

Vs.

1. P.Syamala
   Proprietrix,
   Prajwal Associates.
2. P.Bhaskara Reddy

3. M/s. Jamals,
   Rep. by its Managing Partner
   Mr.S.C.M.Jamaldeen
   Mount Chambers,
   No.758, Anna Salai,
   Chennai-600 002.

4. J.C.Shameem Cassim
Mount Chambers, No.758,
Anna Salai, Chennai 2.

5. A.Dhanasekaran,
   Sub Registrar.
   O/o. The Sub Registrar
   P.H.Road, Periamet,
   Chennai-3.
6. K.S.Abdur Rawoof
7. V.M.A.Jahanara
   Rep. by her Power Agent
   K.S.Abdul Rawoof.
8. Mohamed Imran Sait
9. Abdul Khader Sulaiman
10. Mohamed Rafiq Moosa
11. C.R.Kalser
12. Dr.David V.Rajan
13. Mohamed Arshadu Ali
Rep. By his father and Attorney
M.E.Mohamed Sheriff
14. S.M.Noordeen
15. S.Mariyam Jamaliya
    Rep. by her Power Agent S.A.Ahmed.
16. Anjum Rahim Khan
17. T.M.Athiya Mariyam
    Rep. by her father & guardian
    T.M.Abdul Shakoor
18. M.M.Fathima Fasmin
    Rep. by her Power of Attorney Agent
    M.A.Mohamed Yousuf

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

19. K.S.A.Mehrajunesha
Rep. by her Attorney
Mohamed Hussain
20. Sherbanu Moosa ..Respondents

Contempt Appeals against the order passed by the Hon'ble Mr.Justice A.K.Rajan in Contempt Petition No.319 of 2004 dated 20.12.2004.

For Appellants in
Cont.A.No.15of 2004 :Mr.Habibulla Badsha,S.C. for
Mr.S.A.Rajan
For Appellants in
Cont.A.No.16 of 2004 :Mr. R.Gandhi, S.C. for
M/s.N.V.S.Associates

For Respondents 1 & 2
in both the Appeals : Mr.R.Thyagarajan

COMMON JUDGMENT

M. KARPAGAVINAYAGAM, J.

P.Syamala, the Proprietrix of Prajwal Associates and P.Bhaskara Reddy filed a suit against the defendants 1 to 6 for specific performance or in the alternative, for return of the advance amount for the oral sale. Pending the suit, they filed an application for attachment of the suit property before judgment. The same was ordered. Despite that, the respondents/defendants sold the property to others and executed sale deeds which were presented in the Sub Registrar's Office for registration.

This is the subject matter of contempt in the contempt application filed by Syamala and Bhaskara Reddy, the plaintiffs, the applicants in the Contempt Application No.319 of 2004.

2. Justice A.K.Rajan, the learned single Judge, ultimately after enquiry held the contemners 1 to 6, 7, 8 and 24 guilty of the offence under Section 12 of the Contempt of Courts act and sentenced them to undergo six months imprisonment and imposed a fine of Rs.2,000/- on each of the contemners. The contemners 7, 8 and 24 have filed appeal in Contempt Appeal No.15 of 2004 and the contemners 1 to 6 have also filed separate appeal in Contempt Appeal No.16 of 2004 challenging this order before this Division Bench.

3. The relevant facts that are required for the disposal of these appeals are as follows:

"(a) P.Syamala and P.Bhaskara Reddy, the applicants in the contempt application entered into an oral agreement of sale with one R.Gopinathan and others, the owners of the suit property, the contemners. In pursuance

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

of the same, they paid Rs.70 lakhs towards the sale advance amount to Gopinathan and others, the owners of the property on 9.5.2001.

(b) On 8.7.2002, Gopinathan and others,the owners of the suit property without reference to the oral agreement of sale with Syamala and another, entered into a registered agreement of sale with M/s.Jamals, the 7th contemner. The sale consideration was fixed as Rs.1,45,00,000/-. M/s.Jamals paid Rs.15,00,000/- as advance sale money.

(c) On 22.8.2002, Gopinathan and others, the contemners 1 to 6 executed and registered a power instrument in favour of M/s. Jamals, the 7th contemner after receiving the entire sale consideration. On coming to know of this, on 18.9.2002, Syamala and Bhaskara Reddy filed a suit in C.S.No.644 of 2002 for specific performance or in the alternative, for return of the advance amount against the defendants 1 to 6/contemners 1 to 6. Pending suit, they filed applications in O.A.Nos.640 and 641 of 2002 praying for interim injunction restraining the defendants from alienation of the suit property.

(d) These applications for injunction from alienation were taken up for final disposal on 25.11.2002. The learned single Judge of this Court after hearing the counsel for the parties dismissed the applications rejecting the prayer for injunction from alienation. Against the said order, the plaintiffs filed appeals in O.S.A.Nos.422 and 423 of 2002 before the Division Bench of this Court. By the order dated 12.12.2002, the Division Bench passed an interim order against the defendants 1 to 6 and M/s.Jamals, the 7th contemner to deposit Rs.70 lakhs into the Court within two weeks from the date of the order, failing which the applications for injunction shall stand allowed and as such, there will be an order of injunction from alienation in both the applications as prayed for.

(e) M/s.Jamals, the 7th contemner filed a special leave petition against the order to deposit the amount. Similarly, Gopinathan and others, the defendants 1 to 6 also filed separate special leave petition before the Supreme Court. The Supreme Court granted stay of the impugned order of injunction passed by the High Court and however, directed the defendants 1 to 6/contemners 1 to 6 to deposit Rs.70 lakhs and in case of non-deposit, the plaintiffs will be at liberty to take any action as is available to them in law as against the defendants 1 to 6. This order was passed on 5.5.2003.

(f) As no deposit was made by the defendants 1 to 6, the plaintiffs filed an application on 15.5.2003 in Application No.2295 of 2003 for attachment of the schedule property before judgment. This matter came up before Justice C.Nagappan. In that matter, the contemners 1 to 6 alone were the parties. Justice C.Nagappan by the order dated 21.5.2003, after hearing the counsel for the plaintiffs and the defendants 1 to 6/contemners 1 to 6, passed an order directing for status quo.

https://hcservices.ecourts.gov.in/hcservices/

(g) On 27.6.2003, M/s.Jamals, the 7th defendant/7th contemner filed an application for being impleaded to enable him to oppose the application for ABJ. After hearing the counsel for the parties, the impleading petition was allowed. Thereafter, the 7th defendant filed an application on 28.6.2003, requesting to dismiss the application for ABJ. On 31.7.2003, Justice A.K.Rajan took up the application for ABJ and heard the counsel for the parties and allowed the application for attachment of the suit property before judgment, rejecting the application filed by the 7th contemner.

(h) Against the said order, M/s.Jamals, the 7th defendant filed an appeal in O.S.A.No.261 of 2003 before the Division Bench. The Division Bench headed by Justice R.Jayasimha Babu as an interim measure directed ABJ in respect of certain other properties.

(i) Ultimately, the matter in O.S.A.No.261 of 2003 was taken up for final disposal by the Division Bench comprising of Justice N.Dhinakar and Justice A.Kulasekaran. After hearing the counsel for the parties, the Division Bench by the order dated 20.1.2004 set aside the order of attachment dated 31.7.2003 and lifted the attachment on the suit property and directed attachment on alternative properties other than the suit property, belonging to the defendants 1 to 6 which were given as security.

(j) In the meantime, when the status quo order was in force, the sale deeds dated 30.5.2003 and 13.6.2003 were executed and presented for registration. The 7th contemner was impleaded in the application on 27.6.2003. Thereafter, the sale deeds dated 9.7.2003 and 25.7.2003 were executed and presented for registration. Similarly, subsequent to the order of attachment dated 31.7.2003 passed by Justice A.K.Rajan, the sale deeds dated 29.8.2003, 14.11.2003, 28.11.2003 and 2.1.2004 were executed and presented to the Sub Registrar's Office for registration.

(k) Since the matter is pending in the High Court, the Sub Registrar/the 9th contemner though received the documents, kept them without registration awaiting the final orders of the High Court. As indicated above, the final orders were passed by the Division Bench on 20.1.2004 setting aside the attachment order passed by Justice A.K.Rajan by lifting the attachment on the suit property. On receipt of the said intimation, the Sub Registrar registered the sale deeds on 23.1.2004.

(l) The plaintiffs contending that the very act of the execution of the sale deeds and presentation of the same for registration, while the status quo order dated 21.5.2003 passed by Justice C.Nagappan and the ABJ order dated 31.7.2003 passed by Justice A.K.Rajan were in force, would amount to violation of these orders which is liable to be punished for contempt, even though the said sale deeds were registered on 23.1.2004, subsequent to the order of the Division Bench setting aside the order of attachment, had filed the contempt application before Justice A.K.Rajan as against the vendors, power agent, Sub Registrar and purchasers.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

(m) As indicated above, Justice A.K.Rajan found guilty of contempt against the contemners 1 to 7, 8 and 24, which necessitated the said contemners to file these two appeals in Contempt Appeal Nos.15 and 16 of 2004."

4. Mr.Habibulla Badsha, the learned senior counsel appearing for the appellants in Contempt Appeal No.15 of 2004 and Mr.R.Gandhi, the learned senior counsel appearing for the appellants in Contempt Appeal No.16 of 2004 would elaborately argue pointing out various infirmities in the findings of Justice A.K.Rajan, the learned single Judge and contend that the appellants are liable to be discharged from the contempt proceedings and in any event, the imposition of sentence of imprisonment is so harsh and in view of the unconditional apology tendered by them through the affidavits filed before the learned single Judge, at least, they should have been admonished on accepting the apology.

5. In justification of the findings given by the learned single Judge, Mr.R.Thyagarajan, the learned counsel appearing for the respondents 1 and 2 would strenuously submit that the conduct of the appellants/contemners in the execution of the sale deeds and presentation of the same for registration pending ABJ order, would amount to contumacious and therefore, they must be punished with suitable sentence.

6. The learned counsel for both the parties took pain in referring to various portions of the order impugned and documents filed in the form of typed set and cited cart-load of authorities to substantiate their respective pleas. We must make a special mention about the thorough preparation made by Mr.R.Thyagarajan,the learned counsel for the respondents, who collected important decisions of the Supreme Court on the subject and filed the same in the form of typed set and also filed the other typed sets containing the copies of the documents filed in the suit before the single Judge, O.S.As. before the Division Benches and in the S.L.P. before the Supreme Court.

7. Before dealing with the same, let us at the outset refer to the findings given by the learned single Judge.The findings rendered by the learned single Judge are as follows:

"(A) The status quo order dated 21.5.2003 was passed only after hearing the respondents 1 to 7 and as such, they were parties to the proceedings. The order of status quo dated 21.5.2003 got merged with the order of ABJ passed on 31.7.2003. Therefore, the order of status quo was in force from 21.5.2003 to 31.7.2003 and the same was continued to be in force till 20.1.2004 on which date, the ABJ order was set aside. Therefore, till 20.1.2004, there was an order of attachment and also an order to maintain status quo of the suit property. Admittedly, the sale deeds were executed and registered during this period, prior to 20.1.2004. Therefore, the respondents 1 to 7 have done these acts of presentation and registration in deliberate violation of the Court's orders of status quo and ABJ which were in force.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

(B) As per Section 47 of the Registration Act, when a document is presented earlier, but it is subsequently registered, it relates back to the date of presentation. Admittedly, the documents were presented during the period when the status quo order was in force. Therefore, the transfer is deemed to have taken place on the date of presentation, i.e. on the date when the order of status quo was in force. The respondents 1 to 7 failed to maintain status quo. On the other hand, they transferred their right. They had executed the sale deeds and presented for registration. This act of transferring the title of property is nothing but deliberate and open disobedience of the orders of the Court. The 8th respondent is a partner of the 7th respondent. Therefore, he is also proved to have committed contempt of Court.

(C) The 9th respondent is the Sub Registrar. According to him, as per the Standing Order No.28, he was to receive the documents and keep them pending without registration and only after receipt of the order in O.S.A.No.261 of 2003 lifting the attachment on 22.1.2004, he registered the sale documents on 23.1.2004. In view of his explanation, it shall be held that his act of keeping the document as pending does not amount to disobedience of the orders of this Court and therefore, he has not committed the act of contempt of Court and he is discharged.

(D) In so far as the respondents 10 to 19 are concerned, they are bona fide purchasers for value and on that date, no order of attachment was in force. Therefore, there is no sufficient material to accept the contention that they have abetted the act of contempt. The proceedings under the Contempt of Courts Act is quasi criminal in nature and the act complained of should be proved beyond reasonable doubt. Since this is not proved, no contempt is made out as against the respondents 10 to 19. The respondents 20 to 23 and 25 are also bona fide purchasers. Therefore, they are also found not guilty of contempt of Court.

(E) The 24th respondent M.A.Mohamed Sirajudeen is one of the partners of the 7th respondent M/s.Jamals. One partner representing the same firm executed the sale deed in favour of another partner, viz., the 24th respondent. The entire acts taken together would show that the 24th respondent is also a party to the contempt of Court. Therefore, the 24th respondent is guilty of contempt of Court."

8. Assailing these findings, Mr.Habibulla Badsha, the learned senior counsel and Mr.R.Gandhi, the learned senior counsel, both would make the following contentions:

"(A) When the Division Bench allowed O.S.A. setting aside the order of ABJ passed by Justice A.K.Rajan lifting the attachment on suit property and attached some other properties of the contemners 1 to 6 worth more than Rs.2 crores as security for suit amount, embargo on registration disappears and no contempt is made out as against the vendors, especially when the claim of the applicants in the contempt application is well protected.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

(B) As per Section 17 of the Registration Act, transfer will effect only after registration of the document. Unless a document is registered in accordance with the provisions of the Registration Act, there is no transfer of property. Even though Section 47 of the Registration Act provides that when a document is presented earlier, but it is subsequently registered, it relates back to the date of presentation, mere execution and presentation for registration does not confer any right since there is no transfer.

(C) The effect of the order of ABJ passed on 31.7.2003 would only mean that there is a charge or lien on the said property and any alienation pending the order of attachment would at the most be void as per Section 64(2) C.P.C. While the attachment order is in force, if any transfer is made, in contravention of the order of attachment, it would only result in the civil consequence. It will not amount to an act of committing contempt of Court.

(D) The status quo order was passed on 21.5.2003 by Justice C.Nagappan. Earlier, the order of injunction from alienation was vacated by the Supreme Court. As such, there is no injunction for alienation. Even assuming that the act of presentation for registration before the Sub Registrar would affect the status quo order which was in force, it is for Justice C.Nagappan to deal with the matter to find out whether his order dated 21.5.2003 has been violated. Justice A.K.Rajan gave a finding only with reference to the violation of the status quo order passed by Justice C.Nagappan and not with reference to the ABJ order passed by him."

9. In reply to the above submissions, the gist of the arguments advanced by Mr.R.Thyagarajan, the counsel for the respondents/plaintiffs is as follows:

"(i) The interim order directing status quo was passed by Justice C.Nagappan on 21.5.2003. The final order of ABJ by Justice A.K.Rajan was passed on 31.7.2003. The interim order dated 21.5.2003 got merged with the final order of ABJ dated 31.7.2003. During this period, despite knowing that these orders were in force, the sale deeds were executed by the 7th contemner as power agent on behalf of the contemners 1 to 6 and presented before the Sub Registrar's Office for registration. This is wilful act.

(ii) Even though the documents were registered on 23.1.2004, i.e. subsequent to the order of the Division Bench setting aside the ABJ order dated 20.1.2004, the very presentation of the sale documents for registration itself would amount to interference with the orders of the Court. Further, the order dated 20.1.2004 setting aside the attachment order is under challenge before the Supreme Court. The order dated 21.5.2003 by Justice C.Nagappan got merged with the final order by Justice A.K.Rajan dated 31.7.2003. During this period, the sale deeds were executed and presented by the respondents 1 to 7 knowing fully well about the orders of status quo as well as ABJ. This would amount to violation of the Court's order.

https://hcservices.ecourts.gov.in/hcservices/

(iii) The sale deeds presented though not registered during the relevant period, under Section 47 of the Registration Act, the registration would relate back to the date of presentation. Therefore, the date of presentation must be construed to be the date of registration. In other words, the transfer is deemed to have taken place on the date of presentation, i.e. on the date when the order of status quo was in force. Therefore, it has to be held that the contemners have been correctly found guilty for violation of both the orders, namely status quo and ABJ."

10. Mr.Habibulla Badsha, the learned senior counsel appearing for the appellants in Contempt Appeal No.15 of 2004 and Mr.R.Gandhi, the learned senior counsel appearing for the appellants in Contempt Appeal No.16 of 2004 would cite the following authorities:

(1) ANIL RATAN SARKAR AND OTHERS v. HIRAK GHOSE AND OTHERS (2002 (4) S.C.C. 21)

(2) JHARESWAR PRASAD PAUL AND ANOTHER v. TARAKNATH GANGULY AND OTHERS (2002 (3) C.T.C. 122)

(3) R.N.DEY AND OTHERS v. BHAGYABATI PRAMANIK AND OTHERS (2004 (4) S.C.C. 400)

(4) SURESH CHANDRA PODDA v. DHANI RAM AND OTHERS (2002(1)C.T.C. 565)

(5) DINABANDHU SAHU v. STATE OR ORISSA (1.I.R. 1972 S.C. 180)

(6) SMT. PUKSHPABEN AND ANOTHER v. BADIANI AND ANOTHER (A.I.R. 1979 S.C. 1536)

(7) N.RATHINASABAPATHY v. K.S. PALANIAPPA KANDAR AND OTHERS (1996(1) L.W. 746)

(8) PAPARAJU VEERARAGHAVAYYA v. KILLARU KAMALA DEVI AND OTHERS (A.I.R. 1935 Madras 193)

(9) SUKUMAR MUKHOPADHYAY v. T.D.KARAMCHANDANI (1995, Crl.L.J. 1610)

(10) ABDUL RAZACK SAHIB v. AZIZ UNNISSA BEGUM (A.I.R. 1970 Mad.14)

(11) GURUPRASAD v. NEELAGANTAN (1996 CRL.L.J. 1892)

(12) OFFICIAL RECEIVER, MUZZAFARNAGAR v. CHANDRA AND OTHERS (MANU/UP/0019/1977 = A.I.R. 1977 All.77)

(13) R.N.DEY AND OTHERS v. BHAGYABATI PRAMANIK AND OTHERS (MANU/SC/02862000 = 2000(4) S.C.C.400)

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

(14) SMT. PUSHPABEN AND ANOTHER v. NARANDAS V.BADIANI AND ANOTHER (1979(2)S.C.C. 394)

11. Mr.R.Thyagarajan, the counsel for the respondents/plaintiffs would cite the following decisions:

(1) PADAM SEN AND ANOTHER v. THE STATE OF UTTAR PRADESH (A.I.R. 1961 S.C. 218)

(2) RAM BARAN PRASAN v. RAM MOHIT HAZRA AND OTHERS (A.I.R. 1967 S.C. 744)

(3) SARDA GOVINDA RAO MAHADIK AND ANOTHER v. DEVI SAHAI AND OTHERS (A.I.R. 1982 S.C. 989)

(4) OM PRAKSH GARG v. GANGA SAHAI AND OTHERS (A.I.R. 1988 S.C. 108)

(5) VANNARAKKAL KALLALATHIL SRIDHARAN v. CHANDRAMAATH BALAKRISHNAN AND OTHERS (1990 (3) S.C.C. 291)

(6) HAMDA AMMAL v. AVADIAPPA PATHAR AND THREE OTHERS(1991 (1) S.C.C. 715)

(7) RITA MARKANDY v. SURJIT SINGH ARORAR (1996(6)S.C.C. 14)

(8) R.N.DEY AND OTHERS v. BHAGYABATI PRAMANIK AND OTHERS (2004 (4) S.C.C.400)

(9) CHHOTURAM v. URVASI GULATI AND ANOTHER (2001(7) S.C.C. 530)

(10) MRITYUNJOY DAS AND ANOTHER v. SAYED DHASIBUR RAHAMAN AND OTHERS (2001(3)S.C.C. 739)

(11) RAJENDAR SINGH v. RAMDHAR SINGH AND DOTHERS (2001(6) S.C.C. 213)

(12) ANIL RATAN SARKAR AND OTHERS v. HIRAK GHOSH AND OTHERS (2002(4) S.C.C. 21)

(13) PREM SURANA v. ADDITIONAL MUNSIF AND JUDICIAL MAGISTRATE AND ANOTHER (2002 (6) S.C.C. 722)

(14) P.G.PATRA v. PURAN FOODS AND ANOTHER (2003(1) S.C.C. 670)

(15) M.C.MEHTA v. UNION OF INDIA AND OTHERS (2003(5)S.C.C. 376)

(16) SANDEEP v. D.LAKSHMI AND ANOTHER (2003(1) S.C.C. 294)

(17) BANK OF BARODA v. SADRUDDIN HASAN DAYA AND ANOTHER (2004(1) S.C.C. 360)

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

(18) Dr. PRODIP KUMAR BISWAS v. SUBRATA DAS AND OTHERS (2004(4) S.C.C. 573)

(19) DAROGA SINGH AND OTHERS v. BK. PANDEY (2004(5) S.C.C. 26)

(20) PRITHAWI NATH RAM v. STATE OF JHARKHAND AND OTHERS (2004 (7) S.C.C. 261)

(21) RAGHAVA KOTIAN v. VASU POOJARY (2004(7)S.C.C. 640)

(22) STATE OF BIHAR AND DOTHERS v. RAJENDRA SINGH AND ANOTHER (JT 2004 (8) S.C.C. 168)

(23) U.P.RESIDENTS EMP. CO.OP. HOUSE BUILDING SOCIETY AND OTHERS v. NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY AND ANOTHER (2004 (9) S.C.C. 670)

(24) SUNITA DEVI v. STATE OF BIHAR AND ANOTHER (2004 (1) S.C.C. 608)

12. Before dealing with the respective contentions, it would be worthwhile to take note of the guidelines given by this Court as well as the Supreme Court, as laid down in the decisions cited supra, while dealing with the contempt applications. The guidelines are as follows:

(1) Undoubtedly, a powerful weapon in the hands of the law Courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law Courts to exercise jurisdiction under the statute.

(2) Mere disobedience of an order may not be sufficient to amount to a "civil contempt" within the meaning of Section 2(b) of the Act of 1971--the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation--the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise. The wilful conduct is a primary and basic ingredient of such an offence.

(3) As regards the "standard of proof", a proceeding under the extraordinary jurisdiction of the Court in terms of the provisions of the Contempt of Courts Act, is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt. The contempt proceedings should not be initiated lightly.

(4) The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. The power is special and needs to be exercised with care and caution. It should be used sparingly by the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Courts on being satisfied regarding the true effect of contemptuous conduct. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the Court. If this limitation is borne in mind then criticisms which are sometimes leveled against the Courts exercising contempt of Court jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided.

(5) The weapon of contempt is not to be used in abundance or misused. Discretion given to the Court is to be exercised for maintenance of the Court's dignity and majesty of law. An aggrieved party has no right to insist that the Court should exercise such jurisdiction as contempt is between a contemner and the Court.

(6) Time and again, the Supreme Court has cautioned as to when and in what circumstances Contempt of Court jurisdiction is to be exercised. Such a power is not intended to be exercised as a matter of course. Courts should not feel unduly touchy when they are told that the orders have not been implemented forthwith. If the Court is told that the direction or the order of the Court has been complied with subsequently, albeit after receipt of notice of contempt, we expect the Court to show judicial grace and magnanimity in dealing with the action for contempt.

(7) Contempt jurisdiction is not to be exercised casually but only sparingly and in very deserving cases. It is appropriate to bear in mind the adage "It is good to have the power of giant, but not good to use it always."

(8) Judicial propriety demands that the Judges by the Higher Court should not bring their person ego into the matter and should bow before the law laid down by the Higher Court. The Court should not be anxious of the vulgar desire to elevate itself for grasping after a pre-eminence by using its legal thumbscrew injudiciously and punishing for this mysterious and undefinable offence. The Court should not be over-hypersensitive. It should not exercise this jurisdiction, upon more question of propriety or on any exaggerated notion of the dignity of the Judges.

(9) The Court has to analyse as to whether the contempt alleged to have been committed by the contemners can be said to have been established firmly without there being any element of doubt involved in the matter. The Court would not be acting on mere probabilities having due regard to the nature of jurisdiction being quasi-criminal conferred on the law courts.

13. Bearing in mind the above guidelines enunciated by this Court as well as the Supreme Court, let us now deal with the question posed in these appeals.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

14. Even at the outset, it shall be pointed out that this Court is constrained to feel that the learned single Judge exceeded his jurisdiction by granting the relief more than what is sought for or more relief what is not sought for in the application for contempt.

15. The prayer in Contempt Application No.319 of 2004 filed by Syamala and Bhaskara Reddy, the applicants, in which 25 persons were arrayed as contemners, is as follows:

"We therefore most humbly and respectfully pray that this Hon'ble Court may be pleased:

(a) to punish the respondents 1 to 9 for violation and disobedience of the order of attachment passed in Application No.2295/03 made in C.S.No.644 of 2002 dated 31.7.2003."

16. As correctly pointed out by the learned senior counsel appearing for the appellants, the learned single Judge had mainly discussed relating to the violation of the status quo order passed by Justice C.Nagappan dated 21.5.2003 and not with reference to his order dated 31.7.2003 from paragaphs 21 to 33. The relevant portions of the findings are as follows:

(A) Admittedly, the documents were presented during the period when the status quo order was in force, and when it is registered after the order passed by the Division Bench, it relates back to the date of presentation, i.e., the transfer is deemed to have taken place on the date when the order of status quo was in force.

(B) They failed to maintain status quo; on the other hand, they transferred their right; they had executed the sale deeds and presented for registration. If this is not contempt of Court, no act can ever be construed as contempt of Court.

(C) Therefore, being a partner of 7th respondent, the 8th respondent is aware of the orders of the Court and hence bound to maintain status quo; the prohibition applies equally to him also. Therefore, his act in transferring the title in his favour is a deliberate act of disobedience of the Court's order.

(D) The entire acts taken together would show that it is a deliberate act of violation of status quo order. Therefore, the 24th respondent is guilty of contempt of Court.

17. Admittedly, there is no discussion about the violation of the ABJ order. On the other hand, the above findings would show that the learned single Judge mainly concentrated on the status quo order passed by Justice C.Nagappan. In other words, even though the prayer in the contempt application was for punishment of violation and disobedience of the order of attachment made in Application No.2295 of 2003 on 31.7.2003 by Justice A.K.Rajan, which gives rise to the cause of action for the applicants in the contempt application to move before Justice A.K.Rajan, we are not able to see any logic for the learned single Judge to have dealt with the alleged violation of the order passed by Justice C.Nagappan.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

18. Further, the averments in the contempt application and the prayer on the basis of averments would only show that the respondents 1 to 9 have violated the order and they alone are to be punished. Strangely, the learned single Judge not only punished the respondents 1 to 8, but also the 24th respondent.

19. A perusal of the entire order of the learned single Judge would indicate that he was of the opinion that the order of status quo passed by Justice C.Nagappan dated 21.5.2003 got merged with the order of attachment passed by him and as such, he had jurisdiction. The relevant portion of the finding is as follows:

"The argument of the counsel for the petitioners that the order of status quo merged with the order of attachment, is acceptable since the order of status quo was an interim order pending disposal of Application No.2295 of 2003. When the final order was passed, that order merged with the final order. Therefore, the order of status quo was also in force till 31.7.2003 and was continued to be in force till 20.1.2004."

20. The above finding would show that the learned single Judge felt that the status quo order which was passed by Justice C.Nagappan on 21.5.2003 not only got merged with the order of ABJ dated 31.7.2003 passed by Justice A.K.Rajan, but also the said status quo continued to be in force till his order dated 31.7.2003 was set aside by the Division Bench on 20.1.2004.

21. Let us now deal with the two important aspects relating to the alleged violation of the status quo order passed by Justice C.Nagappan dated 21.5.2003 and the ABJ order passed by Justice A.K.Rajan dated 31.7.2003.

22. There is no doubt in the fact that originally, the Division Bench of this Court granted injunction from alienation in default of the deposit of Rs.70 lakhs to be made by the respondents 1 to 7. However, in the S.L.P. filed by the respondents 1 to 7, the order of injunction was set aside by the Supreme Court directing the defendants 1 to 6/contemners 1 to 6 to deposit Rs.70 lakhs and in case of non-deposit, the plaintiffs were given liberty to approach the High Court to protect their rights over the claim of the suit amount by seeking appropriate relief. When the amount was not deposited by the defendants 1 to 6, the plaintiffs chose to file the application for ABJ on 15.5.2003. Justice C.Nagappan in the application seeking for ABJ has simply directed for status quo by the order dated 21.5.2003. Ultimately, the application was taken up for final disposal. After hearing the parties, Justice A.K.Rajan ordered ABJ on 31.7.2003. Admittedly, the order of ABJ was set aside by the Division Bench on 20.1.2004. Thus, the order of status quo by Justice C.Nagappan was in force between 21.5.2003 and 30.7.2003. During this period, the sale deeds were executed and presented for registration between 30.5.2003 and 25.7.2003. If presentation for registration is held to be violation, it shall be stated that the same is violation of only the status quo order

https://hcservices.ecourts.gov.in/hcservices/

passed by Justice C.Nagappan on 21.5.2003 which was in force till 30.7.2003. Admittedly, Justice A.K.Rajan after hearing the parties passed a final order in the application granting ABJ in respect of the suit property on 31.7.2003. Thus, it is clear that the status quo was in force only up to 30.7.2003 and the order of ABJ comes into existence from 31.7.2003. In other words, the moment the ABJ ordered on 31.7.2003, the order of status quo on 21.5.2003 ceased to exist. Subsequent to 31.7.2003, while the order of ABJ was in force, some sale deeds between 29.8.2003 and 2.1.2004 were presented for registration. As indicated above, the ABJ order was ultimately set aside on 20.1.2004. The above dates would indicate that some sale deeds were presented for registration during the period when status quo was in force and some sale deeds were presented for registration when ABJ was in force.

23. It is now contended that the presentation of the sale deeds for registration when status quo order was in force and the presentation of the sale deeds for registration while ABJ order was in force would amount to contempt of the orders of status quo and ABJ.

24. The learned single Judge, as indicated above, has given two findings with reference to status quo and ABJ which is mutually contradictory: (1) The status quo order passed by Justice C.Nagappan on 21.5.2003 got merged with the ABJ order passed by Justice A.K.Rajan on 31.7.2003. (2) The status quo order passed by Justice C.Nagappan dated 21.5.2003 continued till the ABJ order was set aside on 20.1.2004. With great respect to the learned single Judge, these findings, in our opinion, are not only unsound but also unsustainable, as the order of status quo is entirely different from the order of ABJ.

25. Let us now deal with the alleged violation of the status quo order passed by Justice C.Nagappan on 21.5.2003 and the alleged violation of ABJ order passed by Justice A.K.Rajan on 31.7.2003, one by one.

26. As held by the Supreme Court in M/S.BHARAT COOKING COAL LTD. v. STATE OF BIHAR (A.I.R.1988 S.C.127), the expression 'status quo' is undoubtedly a term of ambiguity and at times gives rise to doubt and difficulty. According to the ordinary legal connotation, the term 'status quo' implies the existing state of things at any given point of time. The scope and effect of the status quo order as meaning the state of things existing while the matter was still pending. It is obvious that status quo as in the High Court cannot mean anything else except status quo as existing when the matter was pending in the High Court before the judgment was delivered. In substance, the status quo as prevailing between the parties when the matter was pending in the High Court had to be maintained.

27. In other words, the meaning of status quo is, the status as on date on which the status quo order was passed shall be maintained. But, the scope of ABJ is quite different since it puts a charge or lien over certain properties. Even though the plaintiffs sought for ABJ in their application seeking for the charge or lien over the suit properties,

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Justice C.Nagappan had chosen not to pass such an order but merely passed an order of status quo. This order was in force between 21.5.2003 and 30.7.2003. Admittedly, the sale deeds were executed and presented for registration during this period. Now, the question is, whether the presentation for registration while status quo was in force would amount to disobedience of the order of status quo?

28. It is not in dispute that though the sale deeds were presented for registration by the contemners 1 to 7, they did not pursue the matter and insist for registration in view of the decision taken by the Sub Registrar/9th respondent to keep them pending awaiting the final orders of this Court. In other words, even though there was presentation of the sale deeds for registration, thereby making an attempt to transfer the right, no such transfer was effected, since they were kept pending by the Sub Registrar awaiting the final orders of this Court. When there is no effort taken by the contemners to pursue the matter by insisting for registration, we feel that it is strange to contend that the order of status quo by Justice C.Nagappan has been wilfully disobeyed.

29. It is contended by the learned senior counsel appearing for the appellants that the alleged contempt of the order passed by Justice C.Nagappan has to be enquired into only by Justice C.Nagappan and not by Justice A.K.Rajan.

30. Even though such an argument requires consideration, we need not go into the said question since even assuming that this could be dealt with by other learned single Judge, viz., Justice A.K.Rajan who passed the final order in the application for ABJ, the presentation of the sale deeds, while the status quo was in force, without pursuing further, in our opinion, would not be construed to be deliberate and wanton violation of the status quo order.

31. Let us now go to the alleged violation of the ABJ order passed by Justice A.K.Rajan dated 31.7.2003.

32. As indicated above, ABJ was ordered in the application filed by the plaintiffs on 31.7.2003 by Justice A.K.Rajan, while disposing of the said application finally. Admittedly, five sale deeds were presented subsequent to the ABJ order between 29.8.2003 and 2.1.2004 in the Sub Registrar's Office for registration. Ultimately, in the appeal filed by the respondents/contemners, the Division Bench set aside the ABJ order in respect of the suit property in the light of the judgment of the Supreme Court vacating the injunction from alienation and holding charge on some other properties as security by the order dated 20.1.2004.

33. It was strenuously contended by the counsel for the respondents/plaintiffs that the fact that all the sale deeds were executed and presented for registration when ABJ was in force would amount to committing contempt of the order of ABJ. To strengthen the above said contention, it was argued that under Section 47 of the Act, even though

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the sale documents executed earlier were registered later, the registration would relate back to the date of presentation of the documents and as such, it must be construed that the date of presentation would be the date of registration.

34. This contention would fail on two grounds:

(i) Earlier, the Division Bench of this Court granted injunction from alienation in favour of the plaintiffs. Admittedly, the said order of injunction from alienation had been set aside in S.L.P.filed by the contemners 1 to 7. However, liberty was given to the plaintiffs by the Supreme Court to pursue action against the defendants 1 to 6 to protect their rights over the suit claim. In that context, having lost the right of pursuing for the order of injunction against alienation at the intervention of the Supreme Court, the plaintiffs have resorted to approch the High Court for the relief of ABJ order in respect of the suit property. As such, there is no specific bar from alienation in the light of the order of the Supreme Court. At the most, it can be said that the alienation of the suit property which is the subject matter of attachment would become void under Section 64(2) C.P.C.

Section 64 C.P.C. prohibits private alienation of property after attachment and reads as under:

"64. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment."

The above provision bans or prohibits a private transfer or delivery of the property attached or of any interest therein contrary to such attachment as void as against all claims enforceable under the attachment. It is pointed out by the learned senior counsel appearing for the appellants that the act of alienation would only result in civil consequence and it will not give rise to any cause of action for contempt. On the other hand, no decision either of this Court or of the Supreme Court has been cited by the counsel for the respondents that act of alienation in spite of attachment would be an act of contempt. When alienation itself cannot be said to be an act of contempt, how can it be said that presentation of sale deeds for registration which were kept pending awaiting the final orders of this Court would amount to the act of contempt? Whatever it is. Admittedly, the registration was done only after the order of ABJ was set aside. The ABJ order passed by Justice A.K.Rajan was set aside by the Division Bench on 20.1.2004. Only thereafter, i.e. on 23.1.2004, the registration was made.

(ii) The effect of Section 47 of the Registration Act would only give a fiction regarding the date on which effect of registration taking place. In other words, though Section 47 provides that when a document is presented earlier, but it is subsequently registered, it relates back to the date of presentation, it is only a fiction. The act of contempt would refer to the mental element of the contemners with reference to the act

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

committed by them during the relevant period, which has to be proved beyond reasonable doubt like in criminal cases. If that principle is applied, the fiction theory for reckoning the date of registration as contemplated under Section 47 of the Act would not apply to this case. Further, Section 17 of the Act would clearly indicate that transfer takes effect only after registration of the document. Thus, it is clear that unless a document is registered in accordance with the provisions of the Registration Act there is no transfer of the property. Therefore, even assuming that the transfer of property when ABJ was in force would amount to violation of the order, the actual transfer had not taken place when ABJ was in force. Only on 23.1.2004, the sale deeds were registered, that is subsequent to the order of the Division Bench dated 20.1.2004 which takes effect retrospectively on the basis of the fiction theory.

35. In this context, yet another aspect of the matter has to be noticed. The learned single Judge discharged 9th respondent, the Sub Registrar from the contempt proceedings only on the ground that the Sub Registrar simply received the documents when the ABJ was in force and merely kept them pending without registration. According to the learned single Judge, receipt of the documents and keeping them pending without registration knowing fully well about the ABJ order passed by the High Court and awaiting the final orders cannot be held to be an act of contempt. Having held that the receipt of the documents and keeping them pending without registration is not a contempt, how can it be held that the act of handing over of the documents to the Sub Registrar's Office which were kept pending without registration and waiting for the final orders of this Court is a contempt? At the risk of repetition, it may be stated that the contemners 1 to 7 having presented the documents in the Sub Registrar's Office, did not pursue the matter further and did not insist the Sub Registrar to register the sale deeds. Therefore, viewed from any angle, it cannot be said that the contemners have committed contempt by violating the order of ABJ wilfully and deliberately.

36. The entire reading of the order of the learned single Judge would indicate that the learned single Judge would reflect his agony not over the conduct of the parties who presented the documents for registration, but mainly on the reason that his order of ABJ was subsequently set aside by the Division Bench which found fault with the ABJ order passed by Justice A.K.Rajan. As the Supreme Court pointed out, Judicial propriety demands that the Judges by the Higher Court should not bring their personal ego into the matter and should bow before the law laid down by the Higher Court. Courts should not feel unduly touchy when they are told that the orders have not been implemented forthwith.

37. In that view of the matter, we are unable to sustain the order impugned. Therefore, the same is liable to be set aside and accordingly set aside. The contemners are discharged. Fine amount, if paid, shall be refunded.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

38. Before parting with this case, we are to refer to the observation made by the Supreme Court in 2002 (1) C.T.C.565 (supra), which is as follows:

"This is an instance of now a Tribunal vested with the powers to punish for Contempt of Court became over sensitive in using such powers. Time and again, the Supreme Court has cautioned as to when and in what circumstances Contempt of Court jurisdiction is to be exercised. Such a power is not intended to be exercised as a matter of course. Courts should not feel unduly touchy when they are told that the orders have not been implemented forthwith. If the Court is told that the direction or the order of the Court has been complied with subsequently, albeit after receipt of notice of contempt, we expect the Court to show judicial grace and magnanimity in dealing with the action for contempt."

39. With the above observation, both the contempt appeals are allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

mam

To
1. The Sub Assistant Registrar,
Original Side,
High Court, Madras.

2.The Section Officer,
Contempt Section,
High Court, Madras.

3. The Section Officer,
Accounts Section,
High Court, Madras.

+ 4 CCs to Mr. R. Thiagarajan, Advocate SR NO 35555, 35554

+ 1 CC to Mr. S.A.Rajan, Advocate SR NO 35547

Judgment
in
Cont.A.Nos.15 & 16
of 2004
23-08-2005

sgr(co)
gp/2.9.

https://hcservices.ecourts.gov.in/hcservices/